noyb

European Center
for Digital Rights

Annual Report

2021

noyb.eu

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Preface

2021 marks **noyb**'s fourth year of fighting for the right to privacy. While we have taken things up a notch by filing a record-breaking amount of complaints, we haven't experienced the same pace and intensity of enforcement by the competent authorities: So far, **noyb** has filed 51 individual cases with Data Protection Authorities in Europe. Only six of these complaints were decided, another three were partly decided. All of them were purely national cases, where there was no need for European cooperation. Not a single pan-European case was decided under the "one-stop-shop" mechanism until this day. This shows that the role of **noyb** as a GDPR enforcement organization became even more relevant and we need to come up with creative approaches to overcome any lack of enforcement:

As a first step towards more efficient enforcement, **noyb** filed over 400 half-automated GDPR complaints on deceptive cookie banners. The long-term project on "deceptive designs" and "dark patterns" aimed at scanning, warning and enforcing the GDPR on up to 10.000 websites in Europe. In a first wave, **noyb** scanned about 2.000 websites and filed about 422 complaints with ten data protection authorities. We had very positive experiences when engaging with companies directly via our free "WeComply" platform, which allowed companies to instantly comply and therefore avoid a complaint at the relevant authority. Hundreds of major websites have switched to a more reasonable cookie banner in the course of this project. We even saw a "spill over" effect, as other companies started to comply even before **noyb** was able to contact them. We will develop our experience with this first mass complaint system and apply it to other situations of widespread non-compliance.

Towards the end of the year, we started to see decisions resulting from our 101 complaints on EU-US data transfers based on the Court of Justice decision in "Schrems II". In a groundbreaking decision, the Austrian and French Data Protection Authority decided on a model case that the continuous use of Google Analytics violates the GDPR. Similar decisions are expected in other EU member states, as regulators have cooperated on these cases in an EDPB "task force". Nevertheless, the approach of data protection authorities continues to be slow and inconsistent. Even after a second clear judgment by the Court of Justice, most authorities do not enforce the law or even openly admit that they won't take action.

PHOTO BY JOEL FILIPE / UNSPLASH

Furthermore, we worked on many other projects, such as worker's rights, or collective redress, or a new automatic browser signal that serves as a consent management system.

Nevertheless, a lack of professional and effective procedures and cooperation of data protection authorities currently means that the majority of **noyb**'s time is spent on procedural problems, often as trivial as ensuring that documents are not lost between authorities, all the way to filing numerous court cases against authorities. It is unfortunate that this takes away resources from more relevant privacy issues.

Given these obstacles, we are happy that the broad support in 2021 also gave us the possibility of expanding our team: we were able to grow by two new team members and by the end of 2021, our multidisciplinary team of 18 people from 12 countries was engaged in bringing forward privacy cases, developing software for our legal tech initiatives, communicating with media and members and making sure the office is up and running. This team has been filing more than 470 complaints this year and is handling several cases in courts. Substantial fines have been imposed based on our complaints, notably a 6.3 million Euro fine for the gay

dating app Grindr. Our work was covered in more than 575 newspaper articles, we gave numerous interviews for newspapers, television and radio stations and participated in seminars and events all over Europe. **noyb** is developing as the brand for privacy enforcement in Europe.

The growth in efficiency and seeing the first undeniable results of our work also meant that, for the first time ever, we were confronted with hostile attitudes and attacks. This is a new experience for our team, but it seems to be a necessary phase on our way towards becoming a key player in the European privacy systems.

2021 was not only the fourth year of our organization but also the second year of a global pandemic. In times like these, everyone needs a long breath to get through these times and so do we – especially working in a European environment and as a European team, where constant international exchange used to be the norm. Therefore, I am even more thankful to all our supporters, members, sponsors, funders and also the team of **noyb**, who made it possible for this organization to get through another difficult year and be financially stable.

Moving forward, into the year 2022, we hope to see a number of decisions especially regarding our 101 model complaints, as well on our cookie complaints. We will continue to build legal tech initiatives to create enforcement on a larger scale, challenge inactive data protection authorities and, unavoidably, continue to file complaints. Besides focusing on lawsuits against regulators that do not handle complaints within reasonable time, **noyb** will also engage in direct actions against companies, including through collective action.

While the directive on collective redress will be implemented in all Member States by the end of 2022, **noyb** is already developing the necessary know-how: **noyb** is officially qualified to start representative actions in Belgium. Together with PrivacyFirst, we also founded "CUIC" in the Netherlands. CUIC is qualified to start collective redress proceedings under the Dutch legal regime. Experiences from such existing national forms of collective redress will give **noyb** a head start when collective redress will be implemented on the European level. This includes developing our internal principles on collective redress, which will center around a purely non-profit and public interest approach to collective redress – as also foreseen by the EU legislator.

We are excited to see where all of this is going. I would like to thank the **noyb** team and our supporters for getting us very far in only four years!

Max Schrems

Honorary Chairman

PHOTO BY SIGMUND / UNSPLASH

About noyb

Our Mission

noyb follows the idea of targeted and strategic litigation in order to strengthen the right to privacy: **noyb** pursues strategic and effective enforcement by thoroughly analyzing and prioritizing privacy violations, identifying the legal weak spots of these cases and litigating them with the best possible strategy and the most effective method to achieve maximum impact. **noyb** either files complaints against companies to the responsible data protection authority (DPA) or brings cases to courts.

We also make use of PR and media initiatives to support the right to privacy without having to go to court. Last but not least, **noyb** is designed to join forces with other organizations, resources and structures to maximize the impact of GDPR, while avoiding parallel structures.

More information can be found in our **concept**.

Who we are

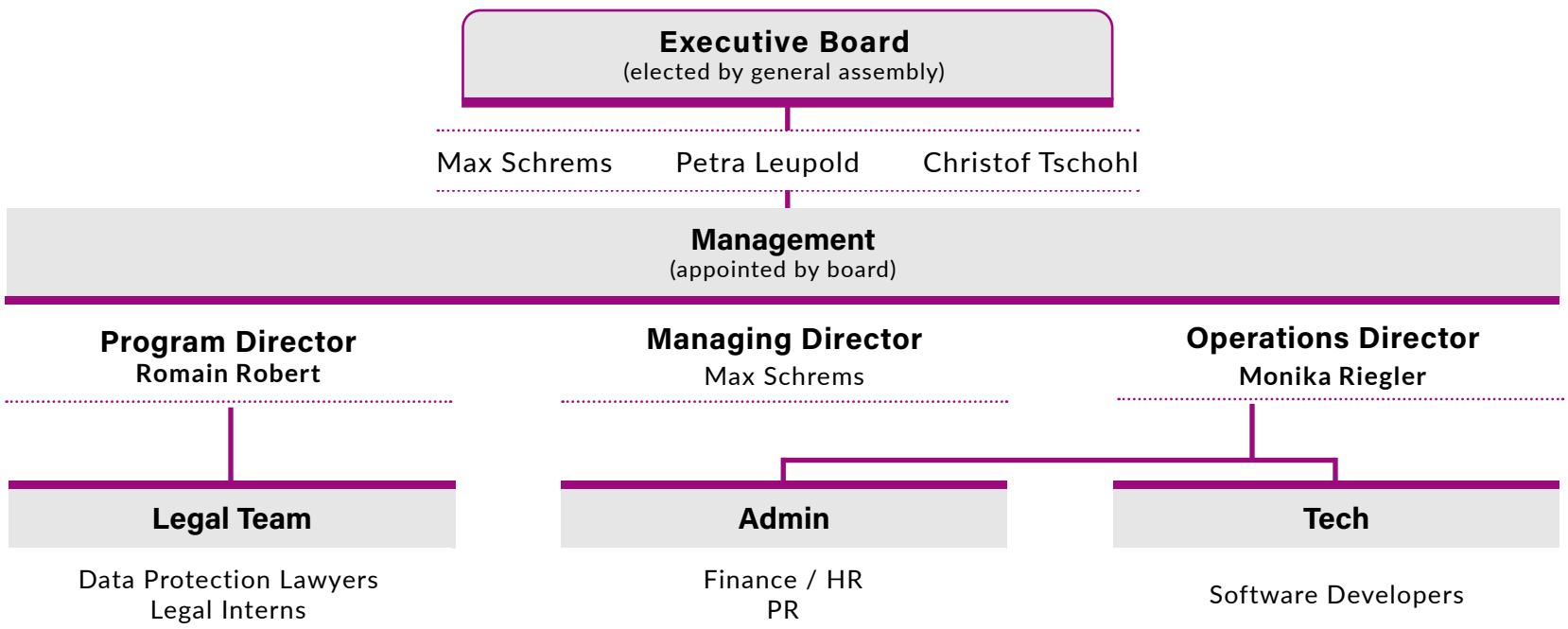
Organigram & Governance

noyb's General Assembly consists of distinguished individual members that are deeply commited to privacy, the GDPR, and the enforcement of fundamental rights and representatives of our institutional members, such as the City of Vienna, Austrian Chamber of Labor and others. The General Assembly meets once every two years and appoints the executive board.

The Executive Board ("*Vorstand*") sets the long term goals, reviews the operations of the organization and meets once a quarter. According to the **Articles of Incorporation** of **noyb** all Board Members strictly act on a *pro bono* (volunteer) basis.

The Executive Board can appoint one or more Directors that manage the daily business within the office and who may represent **noyb** for any matter.

In addition to Max Schrems, who acts as a pro-bono Managing Director of **noyb** since its founding, Romain Robert was appointed as Program Director and is leading the Legal Team. Monika Riegler is responsible for all administrative affairs of **noyb**.



EXECUTIVE BOARD

MAG. MAX SCHREMS

HONORARY CHAIRMAN AND MANAGING DIRECTOR

Max Schrems is an Austrian lawyer, activist and author and has led a number of successful data protection and privacy practices since 2011. His cases (e.g. on the EU-US SafeHarbor Agreement) were widely reported, as enforcement of EU privacy laws was rare and exceptional. He holds a law degree from University of Vienna.

"We have solid privacy laws in Europe, but we need to collectively enforce them to bring privacy to the living room of users. **noyb** *will work on making privacy a reality for everyone. I am happy to provide my personal experience and network to* **noyb***."*

DR. PETRA LEUPOLD, LL.M.

HONORARY BOARD MEMBER

Petra Leupold is the Managing Director of the VKI-Academy, the research academy of the Austrian Consumer Protection Association. She brings invaluable general consumer protection experience to the table and helps to bridge the gap between the tech and the consumer worlds.

"Data protection and the right to privacy are core consumer rights. I want to help guide this organization to be a robust advocate for consumer privacy and—as a representative of the Austrian consumer protection agency (VKI) - support it with our longstanding expertise in consumer law enforcement."

DR. CHRISTOF TSCHOHL

HONORARY BOARD MEMBER

Christof Tschohl successfully brought down the Austrian data retention legislation and was the chairman of epicenter.works, which is dedicated to defending our rights and freedom on the Internet. Furthermore, he is the scientific director of Research Institute – Digital Human Rights Center. He holds a Doctorate of Law from the University of Vienna.

"As chairman of 'epicenter.works' I have been working on government surveillance for years. We successfully challenged the EU data retention directive. As a board member of **noyb**, *I am looking forward to closing the enforcement gap in the private sector."*

STAFF

Legal Team

In the past three years we built a pan-European team of lawyers and experts. Besides answering initial inquiries and helping our members, the core task is to work on our enforcement projects and to engage in the necessary research for strategic litigation. Our team is the key factor in making sure that privacy becomes a reality for everyone.

ROMAIN ROBERT

PROGRAM DIRECTOR

"Data protection on paper looks amazing. But when you try to enforce your rights, it is not always that easy. **noyb** *is a great place for lawyers who want to make privacy a reality."*

ALA KRINICKYTE

"Individuals should know their digital rights and be able to successfully enforce them. I want to help noyb embed a new privacy and data protection culture in the digital world."

MARCO BLOCHER

"In an ever changing digital world, the right to privacy is the backbone of the individual's freedom. I am excited to be part of **noyb***'s journey to help this freedom unfold"*

STEFANO ROSSETTI

"My main interests are digital rights and litigation. **noyb** *gives me a fantastic opportunity to practice both from a unique point of view"*

ALAN DAHI

"A resilient society needs strong digital rights. We help ensure these."

Traineeships

Since October 2018, **noyb** has been offering **legal traineeships** for university graduates with a strong interest in privacy law. Our trainees obtain experience in legal research, factual investigations, and drafting complaints.

Furthermore, they work on **noyb**'s publicly available database GDPRhub and **noyb**'s weekly newsletter GDPRtoday. In 2021, eleven trainees from nine different countries joined **noyb** for a duration of three to nine months.

STAFF

Admin & Tech Team

MONIKA RIEGLER

OPERATIONS DIRECTOR

"We are here to build a strong organization that can help shaping the privacy landscape in Europe for the better - to make sure that privacy becomes a reality"

KIRSI SWOBODA

OFFICE MANAGER

"I'm happy to be part of noyb and to support the team behind the scenes"

PHOEBE TOBIEN

PR MANAGER

"Digital rights and data protection means fighting for the people rather than for the corporations illegitimately profiting through our data. **noyb** *puts the control over our own identity back into our hands. And that is why I truly enjoy working here."*

TENGER OD

OFFICE ASSISTANT

"It really should be None Of Your Business"

MUX

SOFTWARE DEVELOPER

"The internet is made of cats"

HORST KAPFENBERGER

SOFTWARE DEVELOPER

„Good karma to the ones reading that far"

GERBEN VAN DEN BROEKE

SOFTWARE DEVELOPER

It's somewhat sad that there's a need for **noyb***; but since that seems to be the case, I am glad to contribute to the cause."*

How we work

Many companies ignore Europe's strict privacy laws. They take advantage of the fact that, too often, it is too complicated and expensive for individual users to enforce their rights, and that any procedures initiated against them take a very long time to resolve. In May 2018, the new General Data Protection Regulation (GDPR) came into force – heralding a new era in EU privacy protection with new enforcement mechanisms. Article 80 of the GDPR allows NGOs, such as **noyb**, to collectively enforce digital rights.

noyb pursues strategic and effective enforcement by thoroughly analyzing and prioritizing privacy violations, identifying the legal weak spots of these cases and litigating them with the best possible strategy and the most effective method to achieve maximum impact. **noyb** either files complaints against companies to the responsible data protection authority (DPA) or brings cases to courts.

Complaints

Complaints are a cost-effective way to enforce the GDPR. They are filed with a national data protection authority. An unsuccessful complaint can be appealed with the courts.

We decide whether to lodge a complaint based on the following factors:

- **High and direct impact**: A case or project should directly impact many people (a whole industry or a common practice across different sectors and across Europe).
- **High Chances of Success**: Lost cases backfire on our overall aim of promoting privacy. There may be "edgy" cases or cases that just need clarification that are worth the risk.
- **High Input/Output Ratio**: We only engage in cases or projects that have a good input/output ratio in order to maximize the use of our funds.
- **Strategic**: Strategic litigation is based on considering all elements that may affect the case or project and making informed decisions on these elements. For example, if a Data Protection Authority states that they will be focusing on a certain subject matter, it may make sense to file a complaint with that authority. Each case should have ideal timing, jurisdiction, costs, fact patterns, complainants, and controllers.
- **Narrow and Well-Defined**: Many controllers violate just about every Article of the GDPR. We pick the relevant part only.

Lawsuits

There are two types of lawsuits.

The first are lawsuits directly against a company. Such lawsuits typically cost more than complaints, but are oftentimes an even more powerful tool. One advantage is that lawsuits are not subject to a cross-border procedure, as would be the case with a complaint against a company located in a different Member State.

For example, cross-border procedures will apply when a complainant lives in Austria but the targeted company is based in Ireland.

Another type of lawsuit is in the appeal process of a complaint. Such a lawsuit is against the decision of the authority. It is a parallel to how one may appeal the decision of a lower court to a higher court.

Our projects

In 2021, **noyb**'s strategic focus was on cookie banners, online tracking and 'dark patterns', meaning how users are tricked into accepting online tracking by deceptive and unlawful cookie banners. In **noyb**'s first legal-tech initiative, a tool for detection of unlawful cookie banners was developed to upscale enforcement actions. In addition to the mass complaints that were filed based on this system, we developed a browser plugin for consent management which could make cookie banners obsolete and filed complaints against Cookie Paywalls of major media outlets.

Another focus in 2021 was on unlawful practices of credit ranking agencies and automated decision making, which is regulated by Article 22 GDPR. In addition, we also filed several new complaints regarding various privacy violations and continued or ongoing litigation.

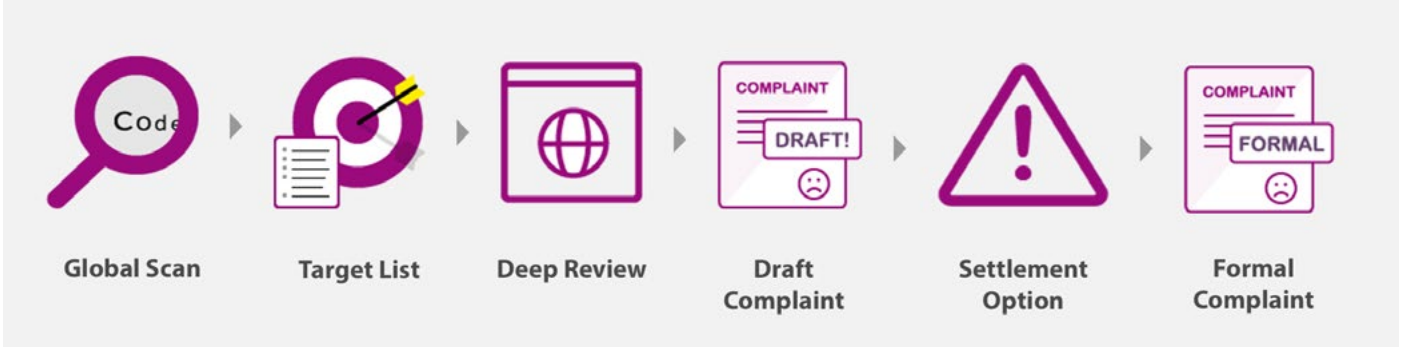
Major developments are published on our website's homepage. An overview of ongoing projects can be found on our project page.

PHOTO BY ALEV TAKIL/ UNSPLASH

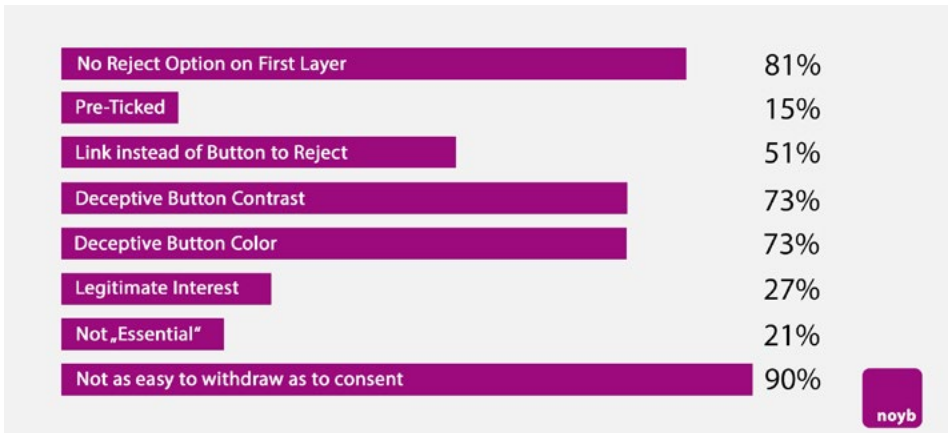
3.1 Actions against Cookie Banners

3.1.1. Unlawful Cookie Banners

The GDPR specifies that users must have control over the use of their data and must therefore have a clear yes or no option as to whether they want to consent to the cookie settings. However, many cookie banners make use of so-called “dark patterns” which nudge visitors to accept cookies by not providing an easy opt-out option or having unfavorable contrasts for buttons or links. However, this contradicts the requirements of the GDPR. This is why **noyb** started a legal tech project in early 2021 to develop a software that automatically detects privacy violations on the most visited pages in Europe and, after a user manually visits a website, automatically generates a draft complaint based on the specific violation.



The websites were selected based on (1) jurisdictions, (2) the number of visits, (3) the Consent Management Platform that is used, and (4) the detected violations. The following violations were detected by the system:



By the end of May 2021, more than 500 first draft complaints were sent to the affected companies. They were provided with a grace period of 30 days and step-by-step instructions to set their cookie banners in compliance with the law. The companies could report their compliance on **noyb**’s WeComply tool, which was specifically developed for this project. If there were still violations after 30 days, a formal complaint was filed with the competent data protection authority. Of the 560 websites complained about, some breaches were fixed by the operators (42%), but as many companies only improved individual aspects, 422 formal complaints were filed in August 2021 with Data Protection Authorities all over Europe. Further rounds are planned for the coming year (up to 10,000 draft complaints).

Results

After the first round of complaints and the considerable amount of media coverage that accompanied the project, improvements became visible - including websites that were not initially affected. Many cookie management software providers also stepped up their advertising for legally compliant configuration. Based on these mass complaints, a task force was established by the European Data Protection Board to coordinate the cooperation of authorities in this case. No formal decision has been made yet on these cases.

3.1.2. Browser Signal "Advanced Data Protection Control"

As a result of a one-year project funded by Netidee Foundation ("RESPECTeD"), **noyb** and the Sustainable Computing Lab at the Vienna University of Economics and Business published a prototype for a new automatic browser signal for managing consent. "Advanced Data Protection Control" (ADPC) aims to demonstrate that a user-friendly European solution for privacy settings can easily be implemented. The developed signal is similar to existing binary systems such as "Do not Track" or "Global Privacy Control", but adapted to the more complex European legal framework.

3.1.3 Cookie Paywalls of Media Websites

As part of **noyb**'s strategic focus on unlawful cookie banners, seven complaints against cookie paywalls of German-language media companies (e.g. derStandard.at, FAZ, spiegel.de and others) were filed. These websites give readers the choice of either agreeing to data sharing with numerous tracking companies or taking out a subscription for up to € 80 per year. **noyb** argues that being forced to pay to not be tracked is not a free choice and consent is therefore invalid. A common misconception is that **noyb** consequently demands that online media should be provided for free when in fact **noyb** only demands that users are not forced to consent to the sharing of users' personal data for advertising purposes. Advertising that does not require user tracking or even payment-only access is not being challenged by **noyb**. **noyb** has not received a formal decision yet in these cases.

3.1.4 Complaint against EU Parliament

In early 2021, **noyb** filed a complaint against the European Parliament on behalf of six Members of Parliament for, among other things, an unclear cookie banner on their internal corona testing website, an incomplete privacy policy, and data transfers to the U.S. that contradict the Court of Justice ruling on Privacy Shield ("Schrems II"). When accessing the website, the MEPs discovered that the website sent over 150 third-party requests, including requests to US-based companies Google and Stripe. While no health data was sent to the US, Stripe and Google clearly fall under relevant US surveillance laws that allow the targeting of EU citizens. At the end of 2021, a decision was made by the European Data Protection Supervisor (EDPS) in this case, resulting in a cease and desist order. More here

PHOTO BY VYSHNAVI BISANI / UNSPLASH

3.2 Automated Decision Making

In 2021, noyb brought complaints against Amazon and Airbnb for automated decision making. Automated decision making (ADM) is strictly regulated in the GDPR to protect people from unfair decisions made by e.g. algorithms. According to Article 22 (3) of the GDPR, the data subject has the right to express his or her point of view, challenge the automated decision, and receive meaningful human intervention.

3.2.1 Complaint against Airbnb

PHOTO BY ANDREW NEEL / UNSPLASH

Since thousands of host and guest reviews are left every day, Airbnb relies on algorithms to check whether these reviews comply with their review policy. Reviews that are biased or irrelevant are automatically deleted by these algorithms. Airbnb automatically deleted the complainant's reviews, which led to her losing her "Superhost" status, resulting in significant disadvantages for the complainant. Under the GDPR, any individual who is subject to ADM has the right to contest the decision and obtain a meaningful human review of his or her case, where all relevant circumstances are considered. Airbnb failed to comply with this and did not answer an access request that was made 1.5 years ago. As a result, **noyb** filed a **complaint** with the Data Protection Authority Rheinland-Pfalz.

3.2.2 Complaints against Amazon

Amazon uses automated decision-making processes to accept or reject employees on its "Mechanical Turk platform". This platform connects various businesses and small independent workers located all over the world, which perform micro tasks for remuneration. The complainant applied to be a worker but was rejected by Amazon without any further information given. Despite many attempts to contact the company and get information, she never got an answer from Amazon. **noyb** filed a **complaint** in December 2021 with the Luxembourg DPA.

In October 2021, another complaint was filed against Amazon with the Austrian DPA because a customer was denied payment via a "monthly invoice" by algorithms. For automated individual decisions - such as whether or not to allow payment on account - a company must provide meaningful information about the logic involved and the scope of the underlying data processing.

In Amazon's privacy policy, however, only vague information about any credit checking mechanisms are to be found. Furthermore, Amazon did not comply with a request for information to a satisfactory extent.

PHOTO BY BENCH ACCOUNTING / UNSPLASH

3.3 Credit Ranking Agencies

Credit ranking is the practice of giving individuals a credit worthiness score in order to determine whether to lend them money or extend a post-paid service (such as an electricity contract) to the individual. Consequently, a poor credit score makes it more difficult for an individual to participate in society. Credit-ranking companies can have great power over consumers and have so far shown little responsibility in exercising this power. Often times, they follow national traditions instead of the GDPR, which has been in force throughout Europe since 2018. In the course of 2021, noyb filed several complaints against illegal business practices of credit reporting agencies.

PHOTO BY SHAHADAT RAHMAN / UNSPLASH

3.3.1 Illegal storage of personal data

KSV 1870 uses access requests under Article 15 GDPR to harvest data on people that have previously been unknown to them for their creditworthiness database. This practice turns access requests into "self-fulfilling prophecies" and violates the principle of purpose limitation in Article 5(1)(b) GDPR. Data sent in connection with an access request must only be processed to reply to this request; it may not be used for any other unrelated purpose. **noyb** filed a complaint with the Austrian Data Protection Authority.

3.3.2 Illegal trade with personal data

Another complaint was filed against the German company CRIF GmbH and the data trader Acxiom to the Bavarian Data Protection Authority. Acxiom collects data for direct marketing purposes but then goes on to sell this data to CRIF Germany, a credit reference agency, for credit ranking purposes. The data subjects are never informed about this process. This practice violates the principle of purpose limitation in Article 5(1)(b) GDPR; creditworthiness assessments are profoundly more invasive than mere direct marketing activities and are also wholly unrelated. Furthermore, the sale of such data is unlawful under Article 6(1)(f) GDPR as there are no legitimate interests that could justify the activity.

A similar complaint was filed against the Austrian company CRIF GmbH and the address publisher AZ Direct. A complaint was already filed against CRIF GmbH in 2020 because CRIF assigned creditworthiness scores without a data basis, which can have a detrimental effect on the economic advancement of those affected. In this case, the Austrian data protection authority had already made a decision, against which both **noyb** and CRIF have appealed.

3.4 Further enforcement action

In addition to our main focus described above, noyb has also filed several complaints for other privacy infringements. An overview of all complaints can be found here.

3.4.1 Mass surveillance through facial recognition

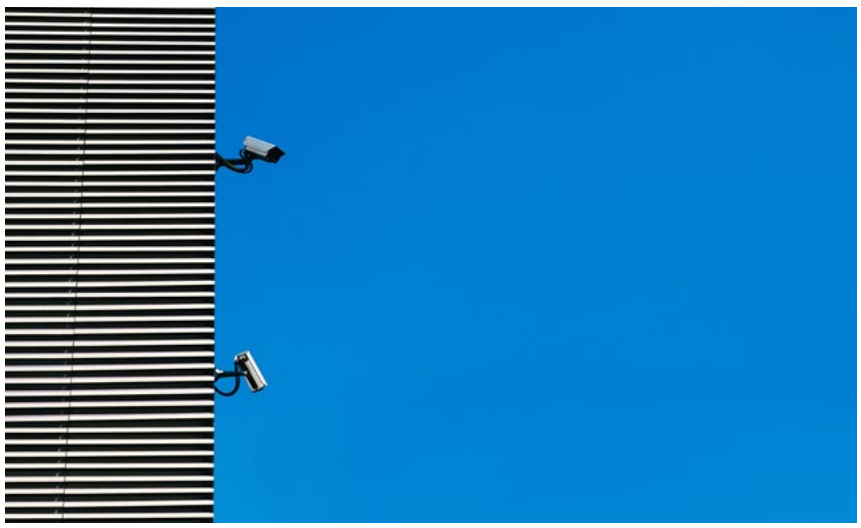


PHOTO BY ARTHUR MAZI / UNSPLASH

An alliance of European privacy organizations, including **noyb**, Privacy International (PI), Hermes Center, and Homo Digitalis, filed a series of complaints against the US facial recognition company Clearview AI, Inc. in May 2021. The company claims to have *"the largest known database of more than 3 billion facial images"*. The images come from social media accounts and other online sources. This is a clear violation of the GDPR since there is no legal basis for processing this data (Article 6(1), Article 9(2), Article 5(1) and (2) GDPR). In addition, Clearview violates Article 27 (1) GDPR since the failed to announce a representative in the European Union. The complaints were filed with data protection authorities in France, Austria, Italy, Greece and the United Kingdom. France, Italy, and the UK have already issued decisions against Clearview AI.

3.4.2 Illegitimate Means of Authentication

In November 2021, **noyb** filed a complaint against the dating app **Grindr** for demanding illegitimate means of identification from their users. Grindr makes the registration process simple and fast – not only to comply with data minimization, but also because using Grindr in a supposedly anonymous way is part of the promise to users. However, when users try to exercise their rights to find out what personal data the company has on them, Grindr requires them to send a selfie showing a government issued ID. This a clear violation of the principle of data minimization (Article 5 (1)(c) GDPR).

3.4.3 Mobile Tracking

Following complaints against Apple's tracking code IDFA in 2020, **noyb** launched further action against **Google's Android Advertising Identifier (AAID)**. The ID allows Google and all apps on the phone to track a user and combine

PHOTO BY THOM BRADLEY / UNSPLASH

information about online and mobile behavior. While these trackers clearly require the users' consent (as known from "cookie banners"), Google neglects this legal requirement. This violates Article 5(3) e-Privacy Directive, which requires consent for storing of information or gaining access to information already stored on a device.

More information can be found here.

3.5 Challenging DPA decisions

In the past four years, noyb was mainly focused on filing complaints with the national Data Protection Authorities. This year, noyb's work is shifting more and more to national courts: On the one hand, noyb increasingly appeals decisions by Data Protection Authorities, on the other hand, noyb files lawsuits against regulators if they fail to make timely progress in our cases. We expect a greater proportion of our activities to take place in the courts over the next few years. Furthermore, several court procedures already brought in 2020 are still pending.

3.5.1 Refusal to act by the Luxembourg DPA

In January 2021, **noyb** filed an appeal against two decisions of the Luxemburg Data Protection Authority (CNPD) before the administrative tribunal of Luxemburg. The CNPD confirmed that the GDPR was applicable but refused to investigate the matter since they considered that they would not be able to enforce their decision, due to the lack of any representative in the EU, and dismissed both cases. By appealing these cases, **noyb** aims to bring clarity and legal certainty on the territorial scope of the GDPR and wants to set up a precedent according to which the courts will recognize that international enforcement mechanisms can be used to enforce decisions against non-EU organizations.

The hearing in this case is scheduled for Fall 2022. This project is supported by the Digital Freedom Fund.

3.5.2 Appeal of Decision by Spanish DPA in Apple IDFA case

In November 2020, **noyb** filed a complaint for the unauthorized creation of the IDFA, a tracker automatically generated by Apple's iOS on iPhones. The case was brought under the national implementation of the ePrivacy Directive (not the GDPR) in Spain. In December 2021, the Spanish Data Protection Authority (AEPD) dismissed the complaint, on the ground that the AEPD was not territorially competent, since Apple's European headquarters are based in Ireland. **noyb** filed an internal appeal against this decision ("*recurso de reposicion*").

The AEPD confirmed its previous decision so **noyb** appealed before the Spanish Supreme Administrative Court, the Audiencia Nacional, which may either annul, confirm or change the AEPD's decision. **noyb** is still waiting for the Audiencia Nacional to schedule the hearing.

3.5.3 Judicial Review against Irish DPC over delays

On May 25th, 2018 when the GDPR came into effect, noyb filed four cases on "forced consent" against Google, Instagram, Whatsapp and Facebook. While the French CNIL issued a fine of € 50 million against Google on foot of one complaint, the other three complaints have been with the

PHOTO BY DONNY JIANG / UNSPLASH

Irish DPC for four years now. After two years, **noyb** filed a "Judicial Review" against the DPC before the Irish High Court, alleging that the DPC did not decide without undue delay. Nevertheless, the Irish High Court itself took more than two years to fix a first hearing date. In the meantime, the DPC sent a "draft decision" to the EDPB, making the case irrelevant. The DPC agreed to pay the costs of the Judicial Review – likely ten of thousand.

3.5.4 Criminal filing against the Irish DPC

In October 2021, the Irish Data Protection Commission (DPC) sent a draft decision to other European Data Protection Authorities ultimately stating that Facebook could choose to include the agreement on data processing in a contract, which would lift any GDPR requirements on consent. We received this document under Austrian procedural law, which made the documents free to use. After publishing the problematic draft decision on our website, the Irish DPC sent **noyb** a "take down request", demanding their own draft decision to be removed from public access, claiming that the GDPR and Irish law would make all filings before the DPC "confidential".

By the end of 2021, the Irish DPC demanded **noyb** to sign a "non-disclosure agreement" (NDA) for Facebook's data transfer case. If no such NDA was provided, the DPC would not comply with the duty to hear **noyb** anymore - a clear benefit for the Irish DPC and Facebook. For this reason, **noyb** filed a criminal report with the Austrian Office for the Prosecution of Corruption and started a campaign to raise awareness for this problem. In four "advent readings", held each Sunday in December, **noyb** read from allegedly confidential documents by the Irish DPC and Facebook.

The threads of the DPC and Facebook to bring legal actions against **noyb** were not followed up, showing that the DPC and Facebook in fact know that they have no legal basis to limit **noyb**'s freedom of speech. Instead the DPC now engages in factual retaliation, by illegally withholding documents from **noyb** in other procedures.

3.5.5 Appeals against decisions by the Austrian DPA

In June 2020, **noyb** filed a complaint against the Austrian phone provider A1 Telekom Austria, as A1 refuses to provide traffic and location data to its customers. A1 relies on an old decision from the Austrian Data Protection Authority (DSB) and believes that they are not obliged to provide data information, as users are not able to sufficiently prove that they are the sole users of the phone number/ SIM card.

In October 2021, the DSB issued a decision dismissing most parts of the complaint. It argued that the data subject could not prove that he was the sole user of his cell phone at all times and therefore would not be entitled to access the geolocation data generated by his mobile phone. Regarding traffic data, the DSB held that the national rules implementing the e-Privacy Directive qualify as *lex specialis* and therefore prevail over Article 15 GDPR. **noyb** filed an appeal against the decision of the DSB. The appeal is currently pending with the Federal Administrative Court (BVwG).

Under Austrian law complaints must be decided within six months. **noyb** has consequently also submitted several inactivity complaints (*"Säumnisbeschwerden"*) to the Austrian Data Protection Authority and to the Federal Administrative Court because the Authority fails to meet this deadline.

3.6 Knowledge Sharing

Besides working on complaints and court cases, noyb is also actively disseminating GDPR developments to professionals and the general public, notably through our public wiki GDPRhub and the newsletter GDPRtoday.

3.6.1 GDPRhub and GDPRtoday

In October 2019, **noyb** initiated a newsletter project with the aim to summarize, translate and publish decisions by Data Protection Authorities and rulings by courts in all European Member States. For this purpose, **noyb** created a database with all the national sources across Europe for DPA and court decisions and employed a tool for monitoring them and creating notifications about any updates. GDPRhub and GDPRtoday were started in February 2020: a free and open wiki that allows anyone to find and share GDPR insights across Europe, together with a newsletter showcasing recent additions and commentary on privacy developments.

In the course of 2021, the number of collected and summarized decisions has grown to more than 1,500, with more than 6,800 subscribers receiving the weekly GDPRtoday newsletter. The content on GDPRhub is divided into two databases: decisions and knowledge. The decisions section collects summaries of decisions by national DPAs and European and Member State courts in English. The knowledge section lists commentaries on GDPR articles, DPA profiles, and 32 GDPR jurisdictions (EU + EEA). More than 130 volunteers assist **noyb** in the collection of these sources in jurisdictions which **noyb** could not cover in-house due to language barriers.

3.7 Updates on past projects

So far, noyb has filed 51 individual cases with DPAs in Europe, in addition to mass complaints like the 101 complaints in the aftermath of the Privacy Shield ruling in 2020 and the Cookie Complaints this year. Only six of these complaints were decided, another three were partly decided. All of them were purely national cases, where there was no need for European cooperation. noyb is continuously pushing forward already filed complaints and ongoing proceedings. In 2021, six decisions were made and fines of about 6.4 Mio. Euro were imposed, in other projects only little process was achieved by the responsible authorities. Due to the fact that only 15% of our cases were decided within one year, noyb published an overview of all the pending cases: Overview complaints with DPAs.

3.7.1 101 complaints: use of Google Analytics illegal in Europe

On July 16, 2020, the Court of Justice of the European Union invalidated the Privacy Shield, the transfer mechanism previously used for data transfers between the EU and the United States. As many companies remained in default even after this landmark ruling, complaints were filed on August 17, 2020 against 101 companies from all EU/EEA states whose websites continue to transfer data to the US without a valid legal basis. The respective websites forward data about visitors to Google and Facebook via Google Analytics and Facebook Connect. At the beginning of 2022, the Austrian data protection authority declared the use of Google Analytics and the associated transfer of data to the USA to be unlawful in a landmark decision. Only a few days later, this decision was reaffirmed by the French data protection authority (CNIL). **noyb** expects further similar decisions in the coming months.

3.7.2 Lack of Legal Basis for Data Processing by Grindr

PHOTO BY AFIF KUSUMA / UNSPLASH

Together with the Norwegian Consumer Council, **noyb** filed three strategic complaints against the dating app Grindr and several adtech companies over illegal sharing of users' data in January 2020. Like many other apps, Grindr shared personal data (like location data or the fact that someone uses Grindr) to potentially hundreds of third parties for advertisement.

Almost two years after the complaint was filed, the Norwegian Data Protection Authority upheld the complaint against Grindr, confirming that Grindr had not received valid consent from users in an advance notification. The Authority imposed a fine of 65 Mio NOK (€ 6.3 Mio) on Grindr.

More information can be found here.

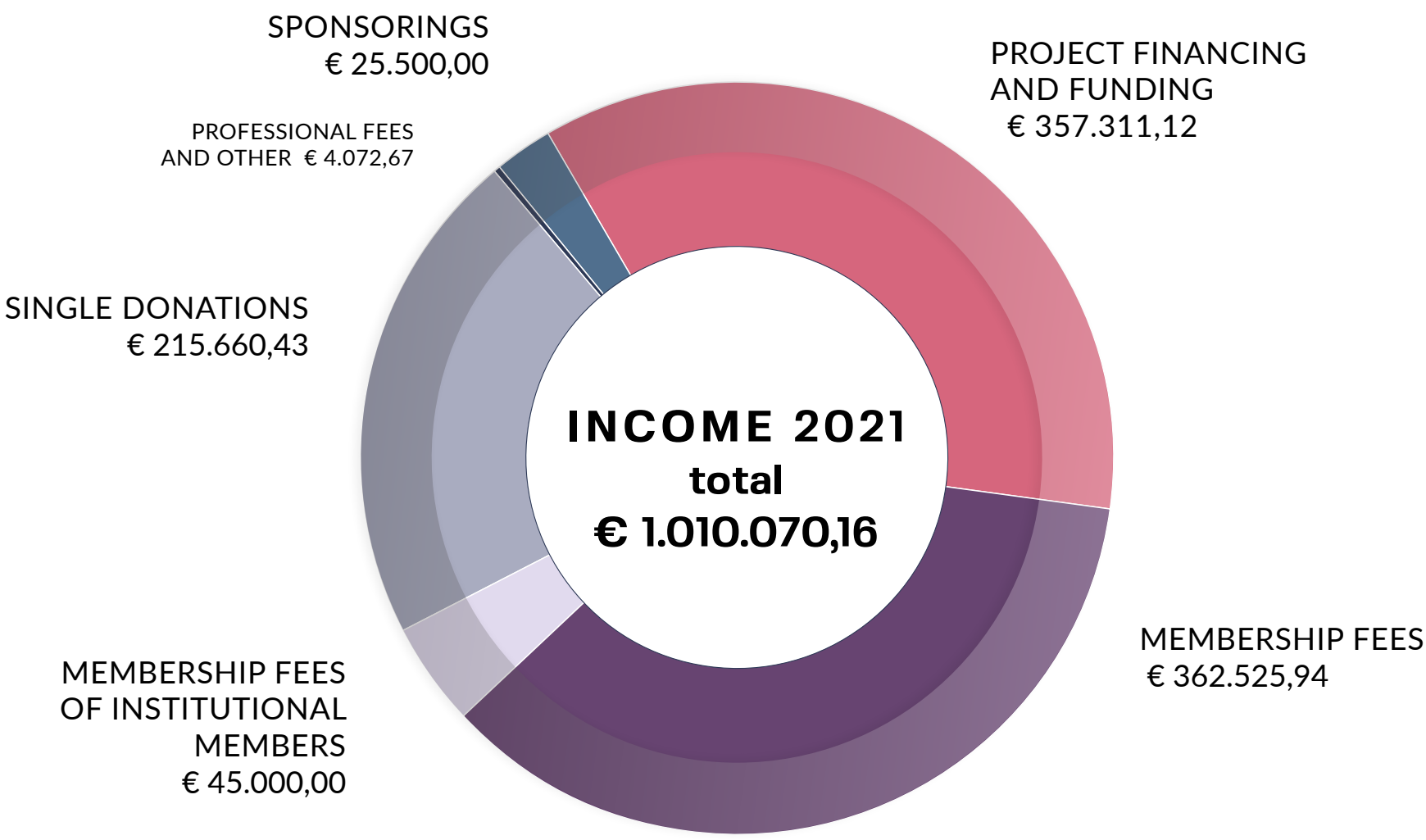
3.7.3 Streaming complaints

In cooperation with the Austrian Chamber of Labour, **noyb** filed eight complaints against streaming services such as Netflix and Amazon Prime in January 2019 for not sufficiently complying with the right of access under Article 15 GDPR.

As one of the most basic rights under the GDPR, the right to access allows users to find out what data a company has on them and how it is being used. Over three years after the complaints were filed, the lack of GDPR compliance remains apparent: merely one of the eight complaints has been resolved. The remaining seven cases have still not been decided.

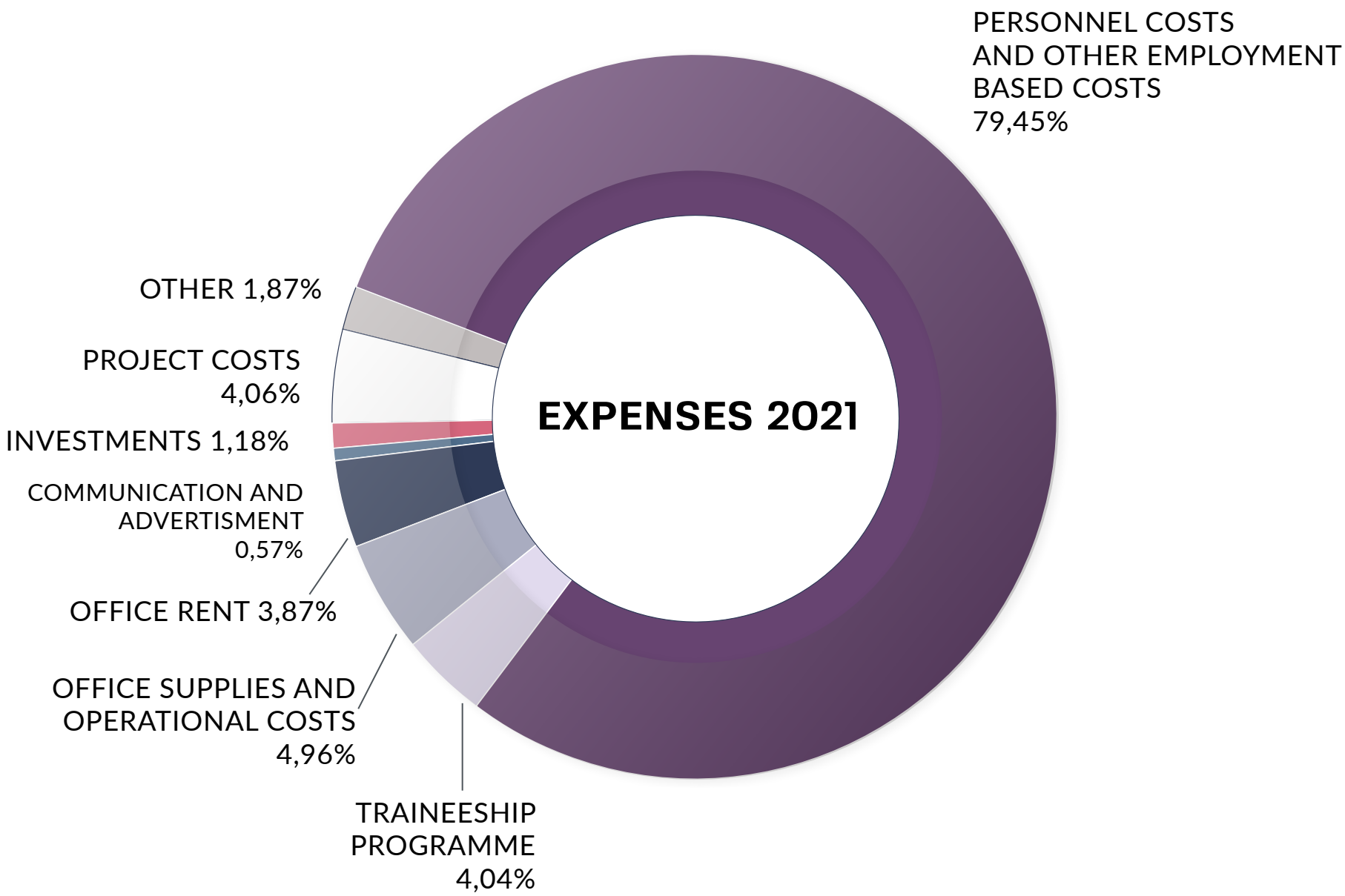
An overview can be found here.

Our finances in 2021



- **Membership fees:** fees from 4.778 individual supporting members
- **Membership fees of institutional members**: City of Vienna (€ 25.000), Austrian Chamber of Labor (€ 20.000)
- **Single donations:** individual donations ranging from € 1 to € 53.000 by individuals or SMEs
- **Professional fees and other:** speaking fees, interest
- **Sponsorings:** Surfboard Holding BV (€ 10.000), RaRe Technology (€ 5.000), Dialog-Mail (€ 10.500 in kind)
- **Project financing and funding:** core funding: Austrian Federal Ministry of Social Affairs, Health, Care and Consumer Protection (€ 15.000), Open Society Foundation (€ 255.894,68 for 2022/2023), Austria Wirtschaftsservice GmbH “NPOfonds” (€ 57.997,31); project funding: Forbrukerradet (€ 3.599,45), Internet Privatstiftung (€ 12.500), Digital Freedom Fund (€7.839,68); Uni Global Union (€ 4.480)

Finances 2021



As noyb is mostly financed by private supporters and public entities, we want to report our incomes and expenses as transparently as possible. For strategic reasons we decided to disclose only our income numerically and use percentages for our expenses. In our first two years we put aside a substantial sum to a reserve fund for future court fees and alike which is therefore not part of our budget. The sum in our reserve fund would be of great strategic importance for our opponents, who are typically very well-funded and have, compared to us, limitless resources, and can therefore not be disclosed.

Thank you for your understanding!

- PERSONNEL COSTS: salaries, ancillary wage costs, travel costs, training costs and payroll accounting
- TRAINEESHIP PROGRAM: housing, public transportation and daily allowances for trainees
- PROJECT COSTS: legal fees for projects, costs for GDPRtoday
- INVESTMENTS: furniture, IT equipment, literature, software and alike
- OTHER: bank fees, membership fees (EDRi)

European Center for Digital Rights

noyb

noyb in numbers

2021

TEAM MEMBERS

13

FROM 8 DIFFERENT COUNTRIES

LEGAL TRAINEES

11

FROM 9 DIFFERENT COUNTRIES

SUPPORTING MEMBERS

4779

FROM 45 DIFFERENT COUNTRIES

477 COMPLAINTS FILED IN 10 COUNTRIES, REPRESENTING NUMEROUS DATA SUBJECTS

FINES BASED ON OUR COMPLAINTS

€ 56 400 000

IN TOTAL

FINES BASED ON OUR COMPLAINTS

€6 400 000

IN 2021

2 TASK FORCES ON EUROPEAN LEVEL ESTABLISHED TO DEAL WITH OUR COMPLAINTS

ARTICLES AND MENTIONS

OVER 575

IN TOTAL

39189 FOLLOWERS ON SOCIAL MEDIA

51

PRESS RELEASES

12

NEWSLETTERS

Thank you to our sponsors and partners
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Startpage

PII TOOLS
Discover, analyze, de-risk

dialog Mail
eMarketing Systems

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